

## SENATE BILL NO. 233

INTRODUCED BY D. MAHLUM

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO REQUIRE FINGERPRINTING AND A BACKGROUND CHECK OF AN APPLICANT FOR TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATION; ALLOWING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO ISSUE A TEMPORARY PRACTICE PERMIT; ALLOWING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO SHARE INFORMATION WITH SCHOOL DISTRICTS; IMPOSING A FEE FOR FINGERPRINTING AND CONDUCTING THE BACKGROUND CHECK; ALLOWING PUBLIC SCHOOL DISTRICTS TO REQUIRE CONSENT TO FINGERPRINTING AND A BACKGROUND CHECK BY AN APPLICANT FOR A NONCERTIFIED PAID OR VOLUNTEER POSITION INVOLVING REGULAR, UNSUPERVISED ACCESS TO PUPILS; ALLOWING SCHOOL DISTRICTS TO IMPOSE A FEE FOR FINGERPRINTING AND CONDUCTING A BACKGROUND CHECK; AUTHORIZING THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION RELATING TO AN APPLICANT FOR TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATION; AUTHORIZING THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION TO THE TRUSTEES OF A SCHOOL DISTRICT RELATING TO AN APPLICANT FOR A NONCERTIFIED PAID OR VOLUNTEER POSITION IN A SCHOOL DISTRICT; AUTHORIZING THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION TO A BUSINESS ORGANIZATION THAT PROVIDES SERVICES TO CHILDREN; AMENDING SECTION 44-5-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Fingerprinting and background check for certification -- fee.** (1) (a) The superintendent of public instruction shall require an applicant for a teacher, administrator, or specialist certificate, class 1 through class 7, and for any other certificate established after [the effective date of this act] who has never been issued a certificate of any kind by the superintendent of public instruction in the state of Montana to submit to fingerprinting and a background check as a condition of certification. The superintendent of public instruction may not issue a certificate to the applicant until state and federal authorities have reported the results of the fingerprinting and the background check to the superintendent

1 of public instruction.

2 (b) The superintendent of public instruction shall consider the information obtained from the results  
3 of the fingerprinting under the provisions of Title 37, chapter 1, part 2, governing the licensure of criminal  
4 offenders, and under 20-4-110. Conviction, including conviction following a plea of nolo contendere, a  
5 conviction in which the sentence is suspended or deferred, or any other adjudication treated by the court  
6 as a conviction, may be considered by the superintendent of public instruction in the certification process  
7 if the conviction was for a sexual offense, a crime involving violence, the sale of drugs, or theft, or any  
8 other crime meeting the criteria of Title 37, chapter 1, part 2.

9 (c) The superintendent of public instruction may issue a temporary practice permit to a person  
10 otherwise qualified, pending the completion of a background check. The permit must designate on its face  
11 that the holder's background check has not been completed. The person may practice under the permit  
12 until a certificate is issued or until a notice of proposal to deny certification is issued by the superintendent  
13 of public instruction.

14 (d) The superintendent of public instruction shall share the results of a background check with any  
15 school district in the state of Montana that makes a written request for the information with respect to  
16 an applicant for employment with that school district.

17 (2) The superintendent of public instruction shall assess a fee of \$35 for fingerprinting and  
18 conducting the background check.

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20 NEW SECTION. **Section 2. Fingerprinting and background checks for school employees and**  
21 **volunteers -- fee.** (1) The trustees of a school district may require an applicant for a paid or a volunteer  
22 position with the school district involving regular, unsupervised access to pupils, other than an applicant  
23 for a position that requires certification from the superintendent of public instruction, to consent to  
24 fingerprinting and a background check as a condition of employment. Information regarding arrests without  
25 conviction may not be considered in the hiring or appointment process of the school district. Information  
26 regarding criminal convictions may be considered if the conviction relates to the public health, welfare, or  
27 safety as it applies to the position sought.

28 (2) The trustees may:

29 (a) assess a fee of \$35 for fingerprinting and conducting the background check; or

30 (b) absorb the cost for fingerprinting and conducting the background check into the budget of an

1 existing program.

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3 **Section 3.** Section 44-5-302, MCA, is amended to read:

4 **"44-5-302. Dissemination of criminal history record information that is not public criminal justice**  
5 **information.** (1) Criminal history record information may not be disseminated to agencies other than  
6 criminal justice agencies unless:

7 (a) the information is disseminated with the consent or at the request of the individual about  
8 whom it relates according to procedures specified in 44-5-214 and 44-5-215;

9 (b) a district court considers dissemination necessary;

10 (c) the information is disseminated in compliance with 44-5-304; or

11 (d) the agency receiving the information is authorized by law to receive it.

12 (2) The department of justice and other criminal justice agencies may accept fingerprints ~~of from~~  
13 and may provide available local, state, multistate, federal (to the extent allowed by federal law), and other  
14 criminal history record information to:

15 (a) the state bar for licensing purposes, with respect to applicants for admission to the state bar  
16 of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the  
17 department or agency by the state bar, exchange available state, multistate, local, federal (to the extent  
18 allowed by federal law), and other criminal history record information with the state bar for licensing  
19 purposes;

20 (b) the superintendent of public instruction for certification purposes, with respect to applicants  
21 for all certificates issued by the superintendent under the provisions of Title 20;

22 (c) the trustees of a school district for employment or appointment purposes, with respect to  
23 applicants for paid and volunteer positions involving regular, unsupervised access to pupils of the district,  
24 other than applicants for a position that requires certification from the superintendent of public instruction,  
25 with the exception of information regarding arrests without conviction; and

26 (d) a business or organization that provides care, treatment, education, training, instruction,  
27 supervision, or recreation for children, whether the business or organization is public, private, for-profit,  
28 nonprofit, or voluntary."

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30 NEW SECTION. **Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as

1 an integral part of Title 20, chapter 4, part 1, and the provisions of Title 20, chapter 4, part 1, apply to  
2 [section 1].

3 (2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the  
4 provisions of Title 20, chapter 3, part 3, apply to [section 2].

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6 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2001.

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